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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re	:	x
SEARS HOLDINGS CORPORATION, et al.,	:	Chapter 11
	:	Case No. 18-23538 (RDD)
Debtors.¹	:	(Jointly Administered)
	:	

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innoval Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

**DEBTORS' RESPONSE AND RESERVATION
OF RIGHTS WITH RESPECT TO MOTION OF TRUSTEES OF THE
ESTATE OF BERNICE PAUAHI BISHOP D/B/A KAMEHAMEHA SCHOOLS,
LLC TO COMPEL PAYMENT OF POST-PETITION RENT AND RELATED
OBLIGATIONS PURSUANT TO 11 U.S.C. §§ 105(a), 363(d)(3) AND 503(b)(1)(A)
AND TO PAY ALL SUBSEQUENT AMOUNTS OWED ON A TIMELY BASIS**

TO THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE:

Sears Holdings Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), hereby file this response and reservation of rights (the “**Response**”) to the *Motion of Trustees of the Estate of Bernice Pauahi Bishop, D/B/A Kamehameha Schools, LLC to Compel Payment of Post-Petition Rent and Related Lease Obligations Pursuant to 11 U.S.C. §§105(a), 363(d)(3) and 503(b)(1)(A) and to Pay All Subsequent Amounts Owed on a Timely Basis*, dated February 5, 2019 (ECF No. 2414) (the “**Motion**”)²:

The Motion

1. The Motion seeks immediate payment of certain unpaid postpetition rent amounts and timely performance of the Debtors’ obligations under the Lease (as defined herein) going forward pursuant to sections 363(e) and 365(d)(3) of the Bankruptcy Code. *See Motion, ¶ 1.*

Background

2. The Trustees of the Estate of Bernice Pauahi Bishop, d/b/a Kamehameha Schools (collectively, the “**Landlord**”) is the successor-in-interest to Windward Mall Shopping Center, a California limited partnership, of that certain department store located in Kaneohe, Hawaii (the “**Premises**”). By that certain ground sublease, dated January 23, 1981 (together with

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

any amendments, modifications, renewals and guaranties, the “**Lease**”), a certain portion of the Premises were leased to Debtor Sears Roebuck and Co.

3. Beginning on October 15, 2018 and continuing thereafter, each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On October 24, 2018, the United States Trustee for Region 2 appointed an official committee of unsecured creditors. No trustee or examiner has been appointed in these chapter 11 cases.

5. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

6. On February 5, 2019, the Landlord filed the Motion seeking immediate payment of certain unpaid postpetition rent amounts and timely performance of the Debtors’ obligations under the Lease. While the Debtors have remained current on postpetition rent, the Landlord contends that, under the terms of the Lease, it is entitled to a substantial increase in the monthly rent. *See Motion, ¶¶ 15-16.*

7. On February 8, 2019, the Bankruptcy Court entered the *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith and (IV) Granting Related Relief* (ECF No. 2507), pursuant to which the Debtors sold substantially all of their assets to Transform Holdco LLC (the “**Buyer**”).

8. The sale to the Buyer closed on February 11, 2019. Pursuant to the Asset Purchase Agreement, dated January 17, 2019 (as amended), the Buyer purchased the exclusive right to select, identify, and designate many of the Debtors' leases for assumption and assignment (the "**Designation Rights**"). The Lease is subject to the Buyer's Designation Rights. The Buyer's Designation Rights terminate on April 12, 2019 with respect to the Lease (the "**Designation Period**").

The Relief Requested Should be Denied

9. Since the filing of the Motion, the Debtors, the Buyer, and the Landlord have engaged in extensive discussions to consensually resolve the dispute regarding the rent rate. Although the parties have made progress in their negotiations and offers and counteroffers have been exchanged, as of the date hereof, the parties have not yet reached a resolution.

10. Given the uncertainty regarding the continuing negotiations and, more importantly, the fact that a decision regarding the Lease will be made by the end of the Designation Period (the date hereof), the Debtors believe that it would be a waste of the resources of the Court and the Debtors' estates to prepare a substantive response to the Motion at the present time.

Reservation of Rights

11. The Debtors believe that the relief sought in the Motion will be rendered moot by the close of business today. Nevertheless, the Debtors reserve their right to supplement this Response after the Designation Period expires and prior to the hearing to be held on April 18, 2019.

Dated: April 12, 2019
New York, New York

/s/ Jacqueline Marcus
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